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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81872; File No. SR-IEX-2017-20]

Self-Regulatory Organizations; Investors Exchange LLC; Order Approving Proposed Rule Change to Adopt Rule 14.602 to Describe the Complimentary Products and Services to Be Made Available to All Listed Companies

October 13, 2017

I. Introduction

On August 10, 2017, the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt Rule 14.602 to describe the complimentary products and services to be made available to all listed companies. The proposed rule change was published for comment in the Federal Register on August 29, 2017.³ No comment letters were received in response to the Notice. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange has proposed to adopt Rule 14.602 to describe the complimentary products and services that will be offered to all listed companies pursuant to a listing program that the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 81469 (August 23, 2017), 82 FR 41077 (“Notice”).

Exchange intends to begin in 2017.⁴

In particular, the Exchange has proposed to provide all listed companies with the same optional complimentary services through access to IEX Issuer, a market information analytics platform consisting of access to a team of market professionals and web-based content.⁵ As described by the Exchange in its proposal, the team of market professionals will provide market intelligence, fundamental and technical trading analysis, and real-time market information to all listed companies.⁶ The Exchange also stated that the web-based portion of IEX Issuer will provide similar information that will enable all listed companies to follow their stock's trading, competitors, and market activity through an online interface.⁷ Further, IEX noted that IEX Issuer may, from time to time, provide information about products and services from third-party vendors that IEX determines may be relevant to listed issuers, without any subsidy or other involvement by the Exchange for such products and services.⁸ The proposed rule text states that the Exchange will provide a description of all products and services available through IEX Issuer on its website.⁹

The Exchange represented in its proposal that all issuers listed on the Exchange will have access to services through IEX Issuer on the same basis and that the Exchange will not be proposing to offer any additional products and services to listed companies on a tiered or

⁴ See id. at 41078.

⁵ See proposed Rule 14.602.

⁶ See id.

⁷ See Notice, supra note 3, at 41078.

⁸ See proposed Rule 14.602. The provision of any products and services from a third-party vendor would need to be effected through arrangements directly between the listed issuer and the third-party vendor, without any subsidy or other involvement by the Exchange. See id.

⁹ See id.

differentiated basis.¹⁰

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act.¹¹ Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(4)¹² and 6(b)(5) of the Act¹³ in particular, in that the proposed rule is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members, issuers, and other persons using the Exchange's facilities, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Moreover, the Commission finds that the proposed rule change is consistent with Section 6(b)(8) of the Act¹⁴ in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that the proposed rule change, which would permit the Exchange to provide complimentary products and services to all listed companies through IEX Issuer, as described above,¹⁵ is appropriate and consistent with the Act. The Commission believes that by describing in its Rules the products and services available to listed companies, the Exchange is adding greater transparency to its rules and the fees applicable to such

¹⁰ See Notice, supra note 3, at 41078.

¹¹ 15 U.S.C. 78f. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78f(b)(8).

¹⁵ See supra notes 5-7 and accompanying text.

companies.¹⁶ This will help to ensure that individual listed companies are not given specially negotiated packages of products and services to list or remain listed that would raise unfair discrimination issues under the Act.

The Commission notes that all listed companies will receive access to the same services on the same basis without any differentiation and the Exchange is not proposing to offer any additional products and services to listed companies on a tiered or differentiated basis. Accordingly, the Commission believes that the proposed rule change is consistent with the requirements of the Act and, in particular, that the products and services are equitably allocated among issuers consistent with Section 6(b)(4) of the Act, and the rule does not unfairly discriminate between issuers consistent with Section 6(b)(5) of the Act.

As described above, the Exchange will provide all of the products and services and will separately provide information about additional products and services available from third-party vendors that IEX determines may be relevant to listed issuers. As noted by the Exchange in its proposal, listed companies may elect to purchase products and services from other vendors, or not to use any such products and services, rather than accepting the products and services offered by the Exchange.¹⁷ The Exchange stated that the provision of any products and services from a third-party vendor would need to be effected through arrangements directly between the listed issuer and the third-party vendor, without any subsidy or other involvement by the Exchange.¹⁸ The Exchange further stated that it does not have exclusive arrangements with third-party

¹⁶ The Commission views complimentary products and services provided by exchanges to listed companies as a discount on the ultimate listing fees paid by such companies. See, e.g., Securities Exchange Act Release Nos. 65127 (August 12, 2011), 76 FR 51449 (August 18, 2011) (order approving SR-NYSE-2011-20) and 65963 (December 15, 2011), 76 FR 79262 (December 21, 2011) (order approving SR-NASDAQ-2011-122).

¹⁷ See Notice, supra note 3, at 41079.

¹⁸ This representation is also specifically set forth in the proposed rule text.

vendors with respect to any optional access to discounted products and services from third-party vendors.¹⁹ The Exchange has represented that listed companies will not be required to accept any discounted products and services as a condition to listing.²⁰ The Commission believes that these representations should additionally help to ensure that individual listed companies are not given specially negotiated deals, through Exchange subsidized discounts on products and services from third-party vendors, to list or remain listed that would raise unfair discrimination issues under the Act .

The Commission believes that the Exchange is responding to competitive pressures in the market for listings in making this proposal. Specifically, the Exchange stated in its proposal that it expects to face competition as a new entrant in the market for exchange listings and that it believes the complimentary products and services that it offers to listed companies will facilitate its ability to attract and retain listings.²¹ In particular, the Exchange states that it expects to face significant competition from the New York Stock Exchange (“NYSE”) and the Nasdaq Stock Market LLC (“Nasdaq”) for listings, both of which offer complimentary products and services to listed companies.²² Accordingly, the Commission believes that the proposed rule reflects the current competitive environment for exchange listings among national securities exchanges, and is appropriate and consistent with Section 6(b)(8) of the Act.²³

¹⁹ See Notice, supra note 3, at 41079.

²⁰ See id.

²¹ See id. at 41078.

²² See id. See also Section 907.00 of the NYSE Listed Company Manual and Nasdaq Rule IM-5900-7.

²³ 15 U.S.C. 78f(b)(8).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁴ that the proposed rule change (SR-IEX-2017-20), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

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Assistant Secretary.

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 17 CFR 200.30-3(a)(12).

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